

1 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

2 -----X

3 UNITED STATES OF AMERICA

14 CR 625 (DLI)

4 versus

U. S. COURTHOUSE  
225 Cadman Plaza East  
Brooklyn, New York

5 CESAR ANAYA MARTINEZ,

6 DEFENDANT.

April 17, 2019  
11:30 AM

7 -----X

8 TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
9 BEFORE THE HONORABLE DORA IRIZARRY  
UNITED STATES DISTRICT JUDGE

10 APPEARANCES

11 Representing the Government:

12 RICHARD DONOGHUE  
13 UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK  
271 CADMAN PLAZA EAST  
BROOKLYN, NEW YORK 11201  
14 BY: MARCIA HENRY, ESQ.

15 Representing the Defendant:

16 ROJAS & OLIVA, PA  
Fountain Square Centre, Suite 206  
17 15800 Pines Boulevard  
Pembroke Pines, Florida 33027  
18 BY: RUBEN OLIVA, ESQ.

19  
20 ALSO PRESENT: MARIO MICHELENA, CERTIFIED SPANISH INTERPRETER

21  
22 Reported by:

23 LISA SCHMID, CCR, RMR  
OFFICIAL COURT REPORTER  
225 Cadman Plaza East, Room N377  
24 Brooklyn, New York 11201

25 Proceedings recorded by mechanical stenography. Transcript  
produced by Computer-Aided Transcription.

1                   COURTROOM DEPUTY: Criminal Cause for Pleading,  
2 Docket Number 14 CR 625, United States versus Cesar Anaya  
3 Martinez.

4                   Please state your appearances.

5                   MS. HENRY: Good afternoon, Your Honor. Marcia  
6 Henry for the United States.

7                   THE COURT: Good afternoon.

8                   MR. OLIVA: Good morning -- good afternoon, Your  
9 Honor. Ruben Oliva on behalf of the defendants, who is  
10 present.

11                  THE COURT: Good afternoon.

12                  And good afternoon, Mr. Anaya Martinez.

13                  And he is being -- is it okay if I refer to you as  
14 Mr. Martinez, just to shorten the proceeding a little bit? Is  
15 that okay with you?

16                  THE DEFENDANT: Yes.

17                  THE COURT: Okay. Thank you.

18                  And Mr. Martinez is being assisted today by the  
19 Spanish language interpreter.

20                  May we have your name, please, for the record?

21                  THE INTERPRETER: Certified Spanish Interpreter  
22 Mario Michelena. Good afternoon.

23                  THE COURT: And good afternoon. And Mr. Michelena  
24 was previously sworn.

25                  My understanding is that Mr. Martinez wishes to

1 withdraw his previously-entered plea of not guilty and wishes  
2 to enter a plea of guilty to Count 1 of the third superseding  
3 indictment that's been filed in this case.

4 And that would be pursuant to a plea agreement, is  
5 that correct, Mr. Oliva?

6 MR. OLIVA: That is correct, Your Honor.

7 THE COURT: And Mr. Martinez, is that what you wish  
8 to do today?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Please administer the oath to  
11 Mr. Martinez.

12 (Defendant sworn.)

13 THE COURT: Mr. Martinez, I must ask you a number of  
14 questions to assure myself that your plea is a valid plea, and  
15 some of the questions may seem a little bit odd that I'm  
16 asking you, but just bear with us, because I have to make a  
17 complete record.

18 Are you able to speak and understand English?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Are you able to read and write in the  
21 English language?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: And Mr. Oliva, it is my understanding  
24 that you are fluent in the Spanish language, is that correct?

25 MR. OLIVA: That is correct, Your Honor.

1 THE COURT: And have you been able to communicate  
2 with your client in the Spanish language?

3 MR. OLIVA: I have, Your Honor.

4 THE COURT: And does that include also the ability  
5 to translate documents to him?

6 MR. OLIVA: That's correct, Your Honor. And in  
7 fact, I've had the documents professionally translated.

8 THE COURT: Okay. And Mr. Martinez, do you agree  
9 with the representation that's been made by Mr. Oliva  
10 concerning his conversations with you in Spanish?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And also with respect to translations  
13 that have been provided to you, both by him and by a  
14 professional interpreter?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Have you had any difficulty at all in  
17 communicating with your attorney?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: And have you had any difficulty at all  
20 communicating with him either directly or through an  
21 interpreter in the case where that might have happened?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: So it is important, as I said -- I'm  
24 going to be asking you a number of questions -- so it is  
25 important that if there is anything at all that you do not

1 understand, if you do not understand the question that I am  
2 asking you or if you do not understand what I am explaining to  
3 you, it is important that you let me know that. I will be  
4 happy to reword the question or explain whatever it is you do  
5 not understand to the best of my ability.

6 Do I have your assurance that you will let me know  
7 if there is anything that you do not understand?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Importantly, I do not want you to answer  
10 a question if you do not understand it. So let me know before  
11 you answer a question that you do not understand what I'm  
12 asking. Okay?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Thank you.

15 Do you understand that you have the right to be  
16 represented by counsel at trial and at every other stage of  
17 the proceedings, including this one today?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand that if you cannot  
20 afford counsel, that the Court may appoint counsel for you at  
21 no cost to you?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And my understanding, Mr. Oliva, is that  
24 you have been retained in this matter, correct?

25 MR. OLIVA: Yes, Your Honor, I have.

1           THE COURT: But you do understand that if at some  
2 point it becomes necessary to appoint counsel -- different  
3 counsel and you cannot afford counsel, that the Court may do  
4 so. Do you understand that?

5           THE DEFENDANT: Yes, Your Honor.

6           THE COURT: Now, along with that right to counsel,  
7 if at any point in time during this proceeding you would like  
8 to consult with Mr. Oliva, particularly before answering a  
9 question, please let me know that I will give you the  
10 opportunity to consult with him.

11           It does not matter to me how many times you ask me  
12 to explain something or how many times you ask to speak with  
13 Mr. Oliva. I want you to feel satisfied that you had enough  
14 time to consult with Mr. Oliva and that you understand  
15 everything that's going on here today.

16           So do I have your assurance that you will let me  
17 know if you need to speak to -- if you wish to speak to Mr.  
18 Oliva?

19           THE DEFENDANT: Yes, Your Honor.

20           THE COURT: Thank you.

21           You have sworn to tell the truth. This means that  
22 if you answer any of my questions falsely, your answers later  
23 may be used against you in a separate prosecution that's an  
24 entirely different case from this one for the crimes of  
25 perjury or of making a false statement. Do you understand

1 that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: For the record, what is your full name?

4 THE DEFENDANT: Cesar Daniel Anaya Martinez.

5 THE COURT: How old are you now, sir?

6 THE DEFENDANT: Thirty-seven years old.

7 THE COURT: And what is the highest grade that you  
8 completed in school?

9 THE DEFENDANT: First. First grade, elementary  
10 school.

11 THE COURT: Elementary school?

12 And where were you born?

13 THE DEFENDANT: Tierra Alta, Cordoba, Colombia.

14 THE COURT: Are you a citizen of the United States?

15 THE DEFENDANT: No. No, Your Honor.

16 THE COURT: Remember, if you need to speak with your  
17 attorney, that's okay. Just let me know. I'll give you time  
18 to do that.

19 So you went to school in Colombia?

20 THE DEFENDANT: Yes, only one year.

21 THE COURT: Okay. And in that one year, was that  
22 sufficient for you to learn how to read and write?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Okay. Because sometimes in some places  
25 outside of the United States, first or second grade is enough

1 actually to learn how to read and write. It depends on what's  
2 being taught at the school.

3 But you do not feel that that's sufficient?

4 THE DEFENDANT: No, Your Honor. I learned over here  
5 a little bit.

6 THE COURT: Okay. All right. So, you completed  
7 additional schooling here or you learned on your own?

8 THE DEFENDANT: Over here, another Colombian fellow  
9 helped me to learn a little bit.

10 THE COURT: Okay. Are you presently or have you  
11 recently been under the care of a doctor for any reason? High  
12 blood pressure, diabetes, anything at all?

13 THE DEFENDANT: No.

14 THE COURT: Are you presently or have you recently  
15 been under the care of a psychiatrist?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Have you have been hospitalized or  
18 treated for any mental illness?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Have you ever been hospitalized or  
21 treated for addiction to drugs or to alcohol?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: In the past 24 hours, have you consumed  
24 any narcotic drugs?

25 THE DEFENDANT: No, Your Honor.



1 THE COURT: In the past 24 hours, have you taken any  
2 kind of medications, including what might be considered  
3 over-the-counter, like aspirin, Tylenol, anything like that?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: In past 24 hours, have you consumed any  
6 alcoholic beverages?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: As you sit here right now, is your mind  
9 clear?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: You understand what's going on here  
12 today?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Mr. Oliva, have you discussed this  
15 matter with your client?

16 MR. OLIVA: Yes, Your Honor, at length.

17 THE COURT: Okay. We have already discussed that  
18 you have done that in his native Spanish language.

19 In your opinion, is he capable of understanding the  
20 nature of these proceedings?

21 MR. OLIVA: I am.

22 THE COURT: In your opinion, does Mr. Martinez  
23 understand the rights he will be waiving by pleading guilty?

24 MR. OLIVA: He does.

25 THE COURT: Do you have any doubt as to Mr.

1 Martinez's competence to plead at this time?

2 MR. OLIVA: No, Your Honor.

3 THE COURT: Have you advised him of the maximum  
4 sentence and fine that can be imposed?

5 MR. OLIVA: I have, Your Honor.

6 THE COURT: Have you also discussed with him the  
7 operation of the advisory Sentencing Guidelines?

8 MR. OLIVA: I have, Your Honor.

9 THE COURT: Have you also discussed with him the  
10 immigration consequences of pleading guilty?

11 MR. OLIVA: Yes, Your Honor, I have.

12 THE COURT: Mr. Martinez, have you had a sufficient  
13 opportunity to discuss this case with your attorney?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And are you fully satisfied with the  
16 representation and advice given to you in this case by your  
17 attorney?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Have you received a copy of the  
20 indictment that's been filed in this case? And just so that  
21 we are clear, by indictment, I'm talking about the third  
22 superseding indictment that has been filed in this case.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Did you discuss or consult with your  
25 attorney about the charges that are contained in that

1 indictment?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And just again to reiterate, I may just  
4 use the word "indictment" during the course of this  
5 proceeding. When I say "indictment," I am referring to this  
6 superseding indictment, just so that the record is clear.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. And specifically, did you discuss  
10 with Mr. Oliva Count Number 1, which is the count to which you  
11 will be pleading guilty?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Now, and Mr. Oliva, I just want, for my  
14 own understanding, Count 1 charges a continuing criminal  
15 enterprise, and there are alleged a number of violations.

16 Violation 1 deals with international cocaine  
17 manufacturing and distribution conspiracy. And violations 2  
18 through 32, which are reflected in paragraph 11 of the  
19 indictment and the chart in the indictment relates to  
20 international cocaine distribution.

21 Will you be pleading guilty to any of those specific  
22 violations that are contained in the indictment?

23 MR. OLIVA: Your Honor, he's specifically -- I mean,  
24 obviously, he's pleading to Count 1.

25 In terms of the actual violations, he would be

1 pleading guilty to and in this allocution will be making  
2 reference to the Violation Number 1. And as to violation --  
3 two of the violations that are in -- there are 2 to 32.

4 MS. HENRY: I'm sorry. May I confer with counsel  
5 momentarily, Your Honor?

6 THE COURT: Absolutely.

7 MS. HENRY: Thank you.

8 (Confers with defense counsel.)

9 MR. OLIVA: Sorry, Your Honor.

10 THE COURT: That's okay.

11 MR. OLIVA: And I was reminded that, in fact, what  
12 he is pleading to Count 1, and that it is not necessarily  
13 required that he has to plead to every single one of those  
14 violations, but he is going to be pleading to Count 1 and  
15 allocuting sufficiently to justify his plea to Count 1.

16 THE COURT: Okay. But he has to allocute to some  
17 allegation --

18 MR. OLIVA: And he will be doing that.

19 THE COURT: -- that's contained -- and we have gone  
20 through this before.

21 MS. HENRY: Yes, Your Honor. He is going to be  
22 allocuting to three violations of the federal narcotics laws,  
23 and I believe when Your Honor listens to the allocation in  
24 which he will detail his violation of the federal narcotics  
25 laws, it will, in fact, meet the elements of a continuing

1 criminal enterprise that's charged in Count 1.

2 THE COURT: My question was whether any of those  
3 violations are actually contained in the indictment.

4 We have had this discussion previously -- obviously  
5 on the record in this case about pleading to -- since the  
6 government doesn't have to plead each and every violation in  
7 the indictment, that the defendant can plead guilty to an  
8 allegation -- a violation that's not necessarily contained in  
9 the indictment.

10 But for ease of reference, if it is contained in the  
11 indictment, it would be a lot easier for the allocution.

12 MS. HENRY: Understood, Your Honor.

13 It is my understanding -- and Mr. Oliva can confirm  
14 this -- that the defendant will be pleading to violations that  
15 are not stated in the indictment.

16 THE COURT: Okay. All right. That is what I was  
17 getting at. Okay.

18 I don't know, Mr. Martinez, whether you have been  
19 able to understand what we were just discussing here. You  
20 understand what we've been discussing?

21 THE DEFENDANT: (No response.)

22 THE COURT: Would you like to consult with your  
23 attorney, because you're looking at me a little confused?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Yes. Why don't you perhaps explain to

1 him, Mr. Oliva, what we were discussing.

2 MR. OLIVA: (Confers with the defendant.)

3 Yes, Your Honor. I've explained it to him.

4 THE COURT: It's a little bit complicated, and so I  
5 can understand any confusion that he might have.

6 And like I said, if there's anything you do not  
7 understand, just let me know.

8 There is an introduction that is incorporated into  
9 count 1 that describes Los Urabeños, a drug trafficking  
10 organization.

11 And Mr. Oliva, have you discussed that introduction  
12 with Mr. Martinez?

13 MR. OLIVA: I have, Your Honor.

14 THE COURT: Okay. And Mr. Martinez, do you want me  
15 to go through that introduction with you?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Okay. So I just want to jump right into  
18 Count 1, which is the substantive count, and that charges you  
19 with a continuing criminal enterprise as follows. As I said,  
20 that introduction is incorporated into Count 1 at paragraphs  
21 one through seven of the superseding indictment.

22 And it alleges that in or about and between  
23 June 2003 and December 2014, both dates being approximate and  
24 inclusive. That means including that time period, but it  
25 could be above that time. So a little bit before, maybe a

1 little bit after.

2           Within the extraterritorial jurisdiction of the  
3 United States, the defendants, Dario Antonio Usuga-David, also  
4 known as "Otoniel," "Mao," "Gallo," and "Mauricio-Gallo,"  
5 Daniel Rendon-Herrera, also known as "Don Mario," Jairo De  
6 Jesus Durango Restrepo, also known as "Gua Gua," Roberto  
7 Vargas Gutierrez, also known as "Gavilan," Carlos Alberto  
8 Moreno Turberquia, also known as "Nicolas," Aristides Manuel  
9 Mesa Paez, also known as "El Indio," Luis Orlando Padierna  
10 Pena, also known as "Inglaterra," Jobanis De Jesus a Vila  
11 Villadiego, also known as "Chiquito" and "Chiquito Malo,"  
12 Cesar Daniel Anaya Martinez, also known as "Tierra," Jhoni  
13 Alberto Grajales, also known as "Guajiro," Ramiro Caro Pineda,  
14 also known as "Nolasco" and "Hugo," together with others, did  
15 knowingly and intentionally engage in a continuing criminal  
16 enterprise, in that these defendants who I have just named,  
17 committed violations of Title 21, United States Code, Sections  
18 846, 848(e), 952(a), 959(a), 960 and 963, including violations  
19 1 through 33 set forth below -- that's contained within Count  
20 1, as I mentioned earlier -- which violations were part of a  
21 continuing series of violations of those statutes undertaken  
22 by the defendants that I have just named, in concert with five  
23 or more other persons with respect to whom the defendants,  
24 Dario Antonio Usuga-David, Daniel Rendon-Herrera, Jairo De  
25 Jesus Durango Restrepo, Roberto Vargas Gutierrez, Carlos

1 Alberto Moreno Turberquia, Aristides Manuel Mesa Paez, Luis  
2 Orlando Padierna Pena, Jobanis De Jesus a Vila Villadiego,  
3 Cesar Daniel Anaya Martinez, Jhoni Alberto Grajales, and  
4 Ramiro Caro Pineda, occupied a supervisory and management  
5 position, and from which continuing series of violations, the  
6 defendants, Dario Antonio Usuga-David, Daniel Rendon-Herrera,  
7 Jairo De Jesus Durango Restrepo, Roberto Vargas Gutierrez,  
8 Carlos Alberto Moreno Turberquia, Aristides Manuel Mesa Paez,  
9 Luis Orlando Padierna Pena, Jobanis De Jesus a Vila  
10 Villadiego, Cesar Daniel Anaya Martinez, Jhoni Alberto  
11 Grajales, and Ramiro Caro Pineda, obtained substantial income  
12 and resources.

13           The continuing series of violations as defined by  
14 Title 21 of the United States Code, Section 848(c), included  
15 the violations 1 through 33 that are set forth in the  
16 indictment.

17           Violation 1 charges an international cocaine  
18 manufacturing and distribution conspiracy. And that in or  
19 about and between June 2003, and December 2014, both dates  
20 being approximate and inclusive, within the extraterritorial  
21 jurisdiction of the United States, and the defendants, Dario  
22 Antonio Usuga-David, also known as "Otoniel," "Mao," "Gallo,"  
23 and "Mauricio-Gallo," Daniel Rendon-Herrera, also known as  
24 "Don Mario," Jairo De Jesus Durango Restrepo, also known as  
25 "Gua Gua," Roberto Vargas Gutierrez, also known as "Gavilan,"



1 Carlos Alberto Moreno Turberquia, also known as "Nicolas,"  
2 Aristides Manuel Mesa Paez, also known as "El Indio," Luis  
3 Orlando Padierna Pena, also known as "Inglaterra," Jobanis De  
4 Jesus a Vila Villadiego, also known as "Chiquito" and  
5 "Chiquito Malo," Cesar Daniel Anaya Martinez, also known as  
6 "Tierra," Jhoni Alberto Grajales, also known as "Guajiro,"  
7 Ramiro Caro Pineda, also known as "Nolasco" and "Hugo,"  
8 together with others, did knowingly and intentionally conspire  
9 to manufacture and distribute five kilograms or more of a  
10 substance containing cocaine, a Schedule II controlled  
11 substance, intending and knowing that such substance would be  
12 unlawfully imported into the United States from a place  
13 outside thereof, in violation of Title 21 of the United States  
14 Code, Sections 959(a), 959(c), 960(a)(3), 960(b)(1)(B)(ii),  
15 and 963.

16 You understand these charges so far?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Violations 2 through 32 involved  
19 international cocaine distribution.

20 And am I correct, Ms. Henry, that it concerns the  
21 same defendants that I have already recited?

22 MS. HENRY: Yes, Your Honor.

23 THE COURT: Okay. So involving the same defendants  
24 that I just recited in connection with Violation 1, it is  
25 alleged that these defendants, together with others, did

1 knowingly and intentionally distribute a controlled substance,  
2 intending and knowing that such substance would be unlawfully  
3 imported into the United States from a place outside thereof,  
4 which offenses involved a substance containing cocaine, a  
5 Schedule II controlled substance, in the amounts that are  
6 listed in the chart that follows below, contrary to Title 21  
7 of the United States Code, Sections 959(a), 959(c), 960(a)(3),  
8 and 960(b)(1)(B)(ii), and Title 18 of the United States Code  
9 Section 2, which is the aiding and abetting statute.

10 So all of these different violations that are listed  
11 in the chart involve differing amounts of cocaine, all over  
12 one thousand kilograms of cocaine on various different dates.

13 Have you reviewed this chart with Mr. Martinez?

14 MR. OLIVA: Yes, Your Honor.

15 THE COURT: Mr. Martinez, are you familiar with the  
16 chart and the different dates and the different amounts of  
17 cocaine that are alleged to have been involved in the  
18 international cocaine distribution charge?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. Do you want me to go through them  
21 all specifically with you?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Okay. Do you have any questions at all  
24 about this charge?

25 THE DEFENDANT: No, Your Honor.

1           THE COURT: Now, again, I remind you that if there  
2   is anything that I say that you do not understand, please let  
3   me know, and the reason why I say that is because I'm about to  
4   explain the rights that you have and that any person has under  
5   the Constitution and laws of the United States when they are  
6   charged with a crime in the United States.

7           And it's important that you understand these rights  
8   because when you plead guilty, we say you waive or you give up  
9   these rights. Do you understand that?

10          THE DEFENDANT: Yes, Your Honor.

11          THE COURT: The first and the most important thing  
12   that you must understand is that you do not have to plead  
13   guilty even if you are guilty, and that's because under our  
14   legal system, the prosecutor or the government has the burden  
15   of proving the guilt of a defendant beyond a reasonable doubt.  
16   And if the prosecutor cannot or does not meet her burden of  
17   proof, then the jury has the duty to find the defendant not  
18   guilty, even if the defendant is guilty?

19          Do you understand that?

20          THE DEFENDANT: Yes, Your Honor.

21          THE COURT: What this also means is that even if you  
22   are guilty, you have a choice. And it is up to you to decide  
23   what to do -- not your lawyer, not your family, not your  
24   friends or anyone else.

25          You may choose to withdraw your previously-entered

1 plea of not guilty and plead guilty, as you apparently wish to  
2 do today, or you may choose to go to trial simply by  
3 persisting in your plea of not guilty, and make the government  
4 meet its burden of proving your guilt beyond a reasonable  
5 doubt.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: If you plead guilty -- if you plead not  
9 guilty, excuse me, under the Constitution and laws of the  
10 United States, you are entitled to a speedy and a public trial  
11 by a jury with the assistance of counsel on the charges  
12 contained in the indictment filed with the court. Do you  
13 understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And at the trial, you would be presumed  
16 innocent. You would not have to prove that you are innocent,  
17 because it is the government's burden to overcome that  
18 presumption of innocence and prove you guilty by competent  
19 evidence -- that means admissible evidence -- and beyond a  
20 reasonable doubt. Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: If the government does not meet its  
23 burden, the jury would have the duty to find you not guilty.  
24 Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: By pleading guilty, you are giving up  
2 your right to have the government satisfy its burden that you  
3 are guilty beyond a reasonable doubt. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: In the course of the trial, the  
6 witnesses for the government would have to come to court and  
7 testify in your presence.

8 Your attorney would have the right to cross-examine  
9 the witnesses for the government. He could object to any  
10 evidence offered by the government, and he could offer  
11 evidence on your behalf. That would include the right to  
12 subpoena or compel witnesses to come to court and testify, and  
13 it would include the right to raise any defenses that you may  
14 have under the law. Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: By pleading guilty, and if I accept your  
17 plea, you give up your right to confront the witnesses who  
18 would testify against you. You also give up your right to  
19 offer any evidence on your own behalf. You give up your right  
20 to compel witnesses to come to court and testify, and you give  
21 up your right to raise any defenses that you may have under  
22 the law. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: At a trial, you have the right to  
25 testify on your own behalf, but only if you chose to do so.

1 You are not required to testify.

2 Under the Constitution of the United States, a  
3 defendant in a criminal case cannot be forced to take the  
4 witness stand at his trial and say anything that could be used  
5 against him to show that he is guilty of the crime with which  
6 he is charged.

7 If you decided not to testify, then I would instruct  
8 the jury that they could not hold your silence against you.  
9 This is called your right of against self-incrimination. Do  
10 you understand this right?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: By pleading guilty, you are admitting  
13 your guilt by your own mouth, and you give up your right  
14 against self-incrimination. Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: If you plead guilty, I must ask you  
17 questions about what you did in order to satisfy myself that  
18 you, in fact, are guilty of the charge to which you are  
19 pleading guilty, and you will have to answer my questions  
20 truthfully and acknowledge your guilt.

21 In that regard, I remind you that you have taken an  
22 oath to answer my questions truthfully. Do you understand  
23 that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: In other words, it is not enough just to

1 say that you are guilty. You must tell me what it is that you  
2 did that makes you guilty of the particular charge to which  
3 you are pleading guilty. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: If you plead guilty and I accept your  
6 plea, you will be giving up your constitutional right to a  
7 trial, and all the other rights that I have just discussed.  
8 There will be no further trial of any kind. I will simply  
9 enter a judgment of guilty on the basis of your guilty plea.  
10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: If you decided to go to trial and the  
13 jury found you guilty, you could appeal both the verdict and  
14 the sentence. In fact, if you went to trial and your attorney  
15 made motions and I ruled against you on those motions, then  
16 you could appeal from my rulings on those motions. You could  
17 also appeal from any of the evidentiary rulings that I might  
18 make during the course of the trial.

19 However, by pleading guilty and by entering into  
20 this plea agreement that is before the Court, you will have  
21 waived or given up your right to appeal regardless of what  
22 sentence the Court imposes. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: In addition, by entering into this plea  
25 agreement, you also further waive the right to raise on

1 appeal or on collateral review -- that's like *habeas corpus* or  
2 *coram nobis* -- any argument that the statute that you are  
3 pleading guilty to -- the statute that you are pleading guilty  
4 to is unconstitutional, and that the conduct that you're  
5 admitting to does not fall within the scope of those statutes.  
6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: This waiver does not preclude you from  
9 raising any claim of ineffective assistance of counsel in an  
10 appropriate forum. You understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: In addition -- we'll get to that later.  
13 Are you willing to give up your right to a trial and  
14 the other rights that I have just discussed?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, I referred to a plea agreement, and  
17 I have a document before me that's been marked Government  
18 Exhibit Number 1. It consists of multiple pages. The last  
19 page has today's date.

20 And Ms. Henry, is that your signature at the upper  
21 right-hand corner?

22 MS. HENRY: Yes, Your Honor.

23 THE COURT: And whose signature is that below yours?

24 MS. HENRY: Gina Parlovecchio, Supervising Assistant  
25 United States Attorney.



1 THE COURT: Okay. Thank you.

2 Right below Ms. Parlovecchio's signature, there is a  
3 very brief typewritten paragraph that reads as follows: I  
4 have read the entire agreement and discussed it with my  
5 attorney. I understand all of its terms and am entering into  
6 it knowingly and voluntarily.

7 Mr. Martinez, is that your signature there below  
8 that paragraph?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And below Mr. Martinez's signature,  
11 Mr. Oliva, is that your signature?

12 MR. OLIVA: It is, Your Honor.

13 THE COURT: And it's my understanding based on what  
14 you stated previously, that this plea agreement has been  
15 translated into Spanish for Mr. Martinez?

16 MR. OLIVA: That is correct, Your Honor. It was  
17 provided to him, but besides that, obviously, I did go over it  
18 with him in Spanish at length --

19 THE COURT: Okay.

20 MR. OLIVA: -- back then.

21 THE COURT: Thank you.

22 So Mr. Martinez, do you agree that you have been  
23 able to review the terms that are in this written plea  
24 agreement with the assistance of the interpretation or --

25 Was this formally translated by an interpreter?

1 MR. OLIVA: Correct.

2 THE COURT: Okay. So you have -- is it true you had  
3 the assistance of a Spanish language interpreter to translate  
4 the plea agreement for you?

5 MR. OLIVA: He didn't. I had it translated outside,  
6 in writing.

7 THE COURT: Oh, okay. So let me rephrase the  
8 question. Thank you for the clarification.

9 So was this plea agreement provided to you in  
10 Spanish?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. And did you review it with your  
13 attorney?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And were you -- did you review all of  
16 the terms that are in that plea agreement?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand all of the terms that  
19 are in that plea agreement?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And does this written plea agreement  
22 accurately represent the entire understanding or agreement  
23 that you have reached with the government?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And Mr. Oliva, you have indicated that

1 you have reviewed this plea agreement. Obviously, you have  
2 read it and reviewed it with your client, correct?

3 MR. OLIVA: Correct, Your Honor.

4 THE COURT: And you also indicated that you had it  
5 professionally translated for him.

6 Does it reflect your understanding of the entire  
7 agreement that your client has reached with the government,  
8 Mr. Oliva?

9 MR. OLIVA: Yes, Your Honor. It does.

10 THE COURT: And does this plea agreement reflect the  
11 government's understanding of the entire agreement it has  
12 entered into with Mr. Martinez and Mr. Oliva?

13 MS. HENRY: Your Honor, the answer is yes with  
14 respect to the Eastern District of New York. This is the  
15 written agreement that the defendant has reached with the  
16 government in this district.

17 It's the government's understanding -- and we're  
18 just going to make the record today -- after conferring with  
19 my colleagues in the Southern District of Florida where  
20 Mr. Anaya Martinez is also charged, it is our understanding  
21 here that upon their receipt of my notification regarding this  
22 guilty plea, that they will then move to dismiss the  
23 indictment against him in the Southern District of Florida;  
24 however, the terms of that are between Mr. Anaya Martinez in  
25 the Southern District and Florida, and are not included in the

1 written agreement that's being presented today.

2 THE COURT: Is it once he enters the plea here and I  
3 accept the plea or upon sentencing?

4 MS. HENRY: It's our understanding that upon his  
5 entering and you accepting the plea.

6 THE COURT: Okay.

7 MS. HENRY: And me notifying them of the same.

8 THE COURT: Okay. And is that your understanding,  
9 Mr. Oliva, as well?

10 MR. OLIVA: Yes, Your Honor.

11 THE COURT: Okay. Mr. Martinez, do you understand  
12 what has been said here?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. And so just to be clear, there  
15 is -- you have a separate pending case in the Southern  
16 District of Florida. You understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And there's been some agreement that's  
19 been reached that the case in the Southern District of Florida  
20 will be dismissed upon the government in this case, here in  
21 the Eastern District of New York, notifying the prosecutor in  
22 the Southern District of Florida, that you have pled guilty,  
23 and that I have accepted your plea of guilty. Is that your  
24 understanding as well?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. Because that term is not -- what  
2 the government has explained, is that that agreement is not  
3 reflected in the written plea agreement that you signed. Do  
4 you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. Now, before I actually explain  
7 the sentencing scheme that is applicable here -- and that's  
8 laid out for you in the written plea agreement as well -- I  
9 just want to explain some things to you from a practical point  
10 of view.

11 If I accept your plea of guilty today, and by a  
12 separate order -- I'm going to have a separate scheduling  
13 order, and I will direct the Department of Probation to  
14 prepare what's called a Pre-sentence Report or a PSR that will  
15 assist the Court in sentencing.

16 It will set a date for the disclosure of that  
17 Pre-sentence Report, and it will -- and that's not a date to  
18 come to court. It can take -- this is a complicated case. It  
19 can take a lot more than 12 weeks to prepare a Pre-sentence  
20 Report in this case.

21 And it will -- the scheduling order will also set a  
22 second date, will be the date -- which will be the date for  
23 the sentencing hearing, and you'll come to court on that day.  
24 We'll have an interpreter, your lawyer. Probation will be  
25 here, the government and I will be here on that day.

1           The Pre-sentence Report is a very important  
2 document. They're going to interview -- Probation will  
3 interview you. We will notify them that you need the  
4 assistance of the interpreter.

5           You have a right to have your attorney present at  
6 that interview. I strongly advise you that you have your  
7 attorney present at that interview because they're going to  
8 discuss everything with you from the time you were born, your  
9 life in Colombia, any time you spent here in the United  
10 States, your education, your health, any jobs that you held,  
11 your finances -- all of that is going to be discussed with  
12 you. Whether or not you had any drug addiction, your mental  
13 health, they're going to discuss all of that with you. So it  
14 is important that you have your attorney present for the  
15 interview.

16           And as you can understand, all this information is  
17 very important because when I impose sentence, I'm not  
18 imposing sentence on a piece of paper or on a case number. It  
19 is on a human being. So it will tell me who is Mr. Martinez.

20           They are also going to talk to the government to  
21 find out what the evidence was in this case, what their proof  
22 was. And they'll lay out what the offense conduct is and any  
23 relevant conduct pertinent to sentencing. In addition,  
24 Probation is going to come up with its own calculation as to  
25 what the Sentence Guideline range should be.

1 I'm sure that Mr. Oliva has explained this to you  
2 already, but the Guidelines are advisory. They are not  
3 binding on the Court. Probation is an arm of the Court.  
4 Probation does not work for defense counsel. Probation does  
5 not work for the government. Probation is part of the Court.

6 So to assist the Court in sentencing, Probation is  
7 going to do its own calculation, looking at the Sentencing  
8 Guidelines that are advisory, and making that calculation of  
9 what the range should be, looking at the offense conduct, and  
10 also determining whatever your Criminal History Category is,  
11 what your prior criminal history is.

12 In addition, Probation is going to make a  
13 determination as to whether or not any facts exist that would  
14 justify what's called a downward departure within the advisory  
15 Guidelines, either above the Guideline range or below the  
16 Guideline range.

17 In addition, because the Court has to consider  
18 3553(a) factors to determine whether a variance or a sentence  
19 completely outside of the advisory Guidelines system is  
20 appropriate, they're going to make a notation of any factors  
21 they find that they think are relevant with the Court's  
22 determination as to whether a non-Guidelines sentence is  
23 appropriate, either above the Guideline range or below the  
24 Guideline range. You follow me so far?

25 THE DEFENDANT: Yes, Your Honor.

1           THE COURT: Okay. Probation is also going to make a  
2 recommendation to the Court as to what sentence they think is  
3 appropriate under all of the circumstances of this case.

4           Once that is prepared, it will be disclosed to you,  
5 your attorney, the government, and to the Court. All of us  
6 will have an opportunity to review it, to object to anything  
7 we think is incorrect in that report. And if we have to have  
8 a hearing, we'll have a hearing on anything that is in  
9 dispute, on any fact that is in dispute.

10           Because I also have to consider other factors  
11 besides just the Guidelines range, I always ask the attorneys  
12 to give me something in writing, so that they can make a  
13 recommendation to the Court as to what they think is a  
14 reasonable sentence under all of the circumstances, and  
15 explain the reasons what they believe that is the case. On  
16 the date of -- so all of that will happen before the date of  
17 sentence.

18           At the date of the sentencing hearing, to the extent  
19 that there were still any outstanding objections to the  
20 Pre-sentence Report, I will resolve those objections if we do  
21 not need to have a hearing.

22           It will be at that time and not before that time  
23 that I will make the determination as to what the Guideline  
24 range should be in this case. It could be that my  
25 determination -- I should say this, that when Probation



1 calculates its Guidelines range, they might agree with your  
2 attorney. They might disagree with your attorney. Probation  
3 might agree with the government. They might disagree with the  
4 government.

5 When we come to that date of sentence, it's my job  
6 at that point to determine what the Guideline range should be.  
7 I might agree with your attorney. I might disagree with him.  
8 I might agree with the government. I might disagree with the  
9 government. I might agree with Probation. I might disagree  
10 with Probation. I will have to come up with the Guideline  
11 range I believe is reasonable under all the circumstances of  
12 the case.

13 So until that date of sentence -- and sometimes I  
14 need to hear argument from the attorneys in that regard. So  
15 sometimes, even I'm not one hundred percent sure of what the  
16 Guidelines will be before I hear from them on the sentence  
17 hearing date. Do you understand that so far?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: So until that time, we're not going to  
20 know what the Guideline range is.

21 In addition, because I need to consider departures  
22 within the advisory Guideline system, and I also have to  
23 consider these 3553(a) factors, to determine whether or not a  
24 sentence completely outside of the Guidelines is appropriate,  
25 I will hear from the lawyers, and they're going to make

1 arguments to me as what sentence they think is appropriate  
2 under all of the circumstances, and why.

3 The law gives you the right to make a statement to  
4 the Court after I hear from the lawyers, then I will hear from  
5 you if you wish to make a statement. So it is not until all  
6 of that has happened that I actually will impose sentence.

7 So I explain this to you for a couple of reasons.  
8 One, especially because you are in custody, and I have found  
9 over time that when defendants plead guilty -- and the  
10 majority of the defendants do plead guilty -- and they're in  
11 custody, they get very concerned when they haven't come to  
12 court for three months or longer if it's a very complicated  
13 case, and they think that nothing is happening and that people  
14 have forgotten about them, but that's not the case. There is  
15 a lot of work that is going on to get the case ready for  
16 sentencing. So I want you to understand what that process is.  
17 So that's one reason.

18 The other reason is that I want you to understand  
19 that as I sit here today, I have no clue what sentence I will  
20 be imposing because I don't have any of this information. I  
21 have none of it. So, at this point, I cannot say what  
22 sentence I will be imposing. I have to wait to get all of  
23 this information before I can make that decision. Do you  
24 understand that?

25 THE DEFENDANT: Yes, Your Honor.

1           THE COURT: But, the obligation that I have today,  
2 as I sit here, is to make sure that you do understand all of  
3 the consequences of pleading guilty. Okay? So that's my job  
4 today.

5           I do not want you to assume from anything that I  
6 have said already or that I will say that I have already made  
7 up my mind about what sentence I will be imposing, because I  
8 just don't have the information necessary to make that  
9 decision. But I do want to make sure you understand all of  
10 the consequences of pleading guilty. Do you understand that?

11          THE DEFENDANT: Yes, Your Honor.

12          THE COURT: Okay. I know it's a very long and  
13 complicated explanation. Okay? But I want to make sure that  
14 you understand not only what my obligation is today, but  
15 what's going to come afterwards. Okay?

16          So going back to the plea agreement and the  
17 sentencing scheme that is applicable here, with respect to  
18 Count 1, the minimum term of imprisonment is 20 years. The  
19 maximum term of imprisonment is life.

20          The plea agreement notes that it is the parties'  
21 understanding and it is also the Court's understanding that  
22 when the United States requests a defendant be produced from  
23 the Republic of Colombia by extradition, that the United  
24 States agrees that it will not seek a sentence of life  
25 imprisonment, and although this charge that you're pleading

1 guilty to carries a maximum sentence of life, the government  
2 will not seek a sentence of life in this case. Do you  
3 understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Now, the Court has the discretion at  
6 sentencing under the law as it exists now to impose a life  
7 sentence if it deems it appropriate; however, the law also  
8 says that the Court has to take into consideration the  
9 extradition treaties and the purposes of the extradition  
10 treaties that are in effect, and the goals of that extradition  
11 treaty. So the Court is mindful of those goals and of those  
12 terms. Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. I know it's a little bit  
15 complicated, but I want you to be clear that while the  
16 government makes that representation that it will not seek  
17 life, the Court always has that discretion to impose that term  
18 if it believes it is appropriate under all of the  
19 circumstances of the case, but the circumstances of the case  
20 also include the terms of the treaty between the United States  
21 and Colombia as far as as extradition is concerned. Do you  
22 understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. Are the lawyers in agreement that  
25 that's the state of the law at this juncture?

1 MS. HENRY: Yes, Your Honor.

2 MR. OLIVA: Yes, Your Honor.

3 THE COURT: Mr. Oliva? Thank you.

4 Now, if I were to impose a term of imprisonment, I  
5 also would impose a term of supervised release. The minimum  
6 term that I could impose is five years, and the maximum term  
7 would be life.

8 So what that means is, assuming that you do not get  
9 deported -- and we'll talk about that more in a minute -- you  
10 would come under the supervision of the Department of  
11 Probation.

12 There also could be reasons why I want to impose a  
13 term of supervised release even if you are deported, for  
14 example, to avoid any illegal re-entry in the future.

15 But the idea is that would you would come under the  
16 supervision of the Department of Probation. They impose  
17 certain conditions of supervision, for example, that you  
18 not -- that you report on a regular basis. I may impose  
19 certain special conditions of supervised release, for example,  
20 that you not possess a firearm.

21 If you were to violate any of the conditions of your  
22 supervised release, then you could receive an additional jail  
23 sentence up to five years of incarceration, and you would not  
24 get credit for the time you already spent in jail on your  
25 original jail sentence. You would not get credit for any time

1 you already spent on supervised release, even if you were  
2 close to the end of your supervised release term. Do you  
3 understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: There is a maximum fine of \$2 million,  
6 and again, the Pre-sentence Report is going to tell me about  
7 your finances and whether or not you are able to pay a fine  
8 and if so, how much.

9 Restitution does not apply in this case.

10 There is a \$100 special assessment that I must  
11 impose. Those are court costs.

12 In addition, because you are not a citizen of the  
13 United States and by entering into this plea agreement, you  
14 indicated that you understand that by pleading guilty to the  
15 particular charge here, that removal is presumptive? In other  
16 words, it would be mandatory removal to your country of  
17 origin. Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And understanding that, do you still  
20 wish to enter a plea of guilty?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: There is also a criminal forfeiture that  
23 you have consented to. You have consented to give up certain  
24 assets or properties or funds that were the proceeds of the  
25 illegal activity that you are admitting to having engaged in.

1           That means that you give up your right not only to  
2 have any notice of any forfeiture proceedings, but to have a  
3 jury determine the issue or to have a hearing on any issue  
4 concerning forfeiture.

5           You agree to cooperate with the government in  
6 obtaining whatever assets in order to comply with the asset  
7 forfeiture that is being sought by the government.

8           And based on the agreement, you have agreed to the  
9 entry of a Forfeiture Money Judgment in the amount of  
10 \$2,200,000.

11           And I noted that in the plea agreement, there was a  
12 change from the draft that I was given that -- extending the  
13 date by which Mr. Martinez would pay \$50,000 as an initial  
14 payment towards the Forfeiture Money Judgment to May 31 of  
15 2019.

16           And are the parties' initials indicated there?

17           MS. HENRY: Yes, Your Honor.

18           MR. OLIVA: Yes, Your Honor.

19           THE COURT: And Mr. Martinez, are your initials -- I  
20 see initials "CA" there. Are those your initials?

21           THE DEFENDANT: Yes, Your Honor.

22           THE COURT: Okay. So I did receive a draft Order of  
23 Forfeiture, which does not contain this amended date. So I'm  
24 just going to return this back to you, so that that could be  
25 corrected.

1           And the only other question that I had about the  
2   Forfeiture Order is that it does not contain the waiver  
3   language that is in the plea agreement in paragraph eight, in  
4   terms of consequences to the defendant if he fails to pay any  
5   portion of the Forfeiture Money Judgment on before the dates  
6   that are indicated in the plea agreement, and/or in connection  
7   with certain Colombian assets.

8           So it has been determined that there are some assets  
9   that you have in Columbia that is incorporated in a notice  
10   that was also referred to in the plea agreement that's been  
11   provided in translation and in Spanish to the Court.

12           So I don't know if the parties' understanding about  
13   that waiver, whether it should be included in the Forfeiture  
14   Money Judgment.

15           MS. HENRY: Your Honor, given that we need to amend  
16   the draft order anyway, I would confer with my asset  
17   forfeiture colleagues and ensure that all the appropriate  
18   language is included.

19           THE COURT: Yes. Because otherwise, it just says --  
20   it would be in conflict with what the plea agreement says.  
21   And I think that that might be a little bit confusing. So  
22   I'll just return that to the government.

23           And if I could have the revised forfeiture agreement  
24   by May 31st --

25           MS. HENRY: Yes, Your Honor.



1 THE COURT: -- that will give you time to have  
2 Mr. Oliva review it with his client as well.

3 MR. OLIVA: Thank you, Your Honor.

4 THE COURT: Do you have any questions at all thus  
5 far about anything that I have explained to you about your  
6 rights or sentencing or anything of that nature, what the  
7 statute provides?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Okay. So I have told you that the  
10 statute carries with it a minimum of 20 years and a maximum of  
11 life, and I have also explained to you the whole sentencing  
12 process maybe in a very detailed, long way, but so that you  
13 understand that until the date of sentence, you're not going  
14 to know what the Guidelines range is going to be under the  
15 advisory Guideline system, whether there are going to be any  
16 departures that will apply under the advisory Guideline  
17 system, either above or below the Guideline range, or whether  
18 there's going to be a non-Guidelines system that would  
19 apply -- sentence that should be imposed based on the Court's  
20 analysis of 3553(a) factors warranting the imposition of a  
21 non-Guidelines sentence.

22 Nonetheless, at this time, I am going to ask the  
23 parties to give me their best estimate as to what the  
24 Guidelines are likely to say, based upon the facts that are  
25 available to them at this point in time. Please keep in mind

1 that this is an estimate that could be wrong. Do you  
2 understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: What is the government's estimate as to  
5 where within the Guidelines Mr. Martinez will fall?

6 MS. HENRY: Your Honor, the government estimates  
7 that the Guidelines range in this case is life imprisonment.

8 MR. OLIVA: The defense concurs.

9 THE COURT: And also in connection with the  
10 Guidelines, you have also, by entering into this plea  
11 agreement, have agreed that the Guideline range and the  
12 statutory mandatory minimum sentence should be calculated  
13 based on a quantity and drug type of at least 50,000 kilograms  
14 of cocaine. Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And do you understand that by entering  
17 into this plea agreement, you are further stipulating that  
18 certain Guideline enhancements are warranted: First, a  
19 two-level increase pursuant to Guideline 2D1.5(b)(1), for  
20 possession of ha firearm.

21 And that would be for possession of a firearm in  
22 connection with a drug trafficking offense, correct, Ms.  
23 Henry?

24 MS. HENRY: Yes, Your Honor.

25 THE COURT: And two-level increase pursuant to

1 Guideline 2D1.5(b)(2), for the use of violence and directing  
2 the use of violence.

3 And an additional two-level increase pursuant to  
4 Guideline 2D1.5B(11), for the bribery of law enforcement  
5 officers.

6 Do you understand that you're stipulating that those  
7 enhancements would apply?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Again, keeping in mind that I'm the  
10 final -- I make the final determination as to what  
11 enhancements apply or do not apply, and what the Guideline  
12 range is. You understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And it could be that I agree with the  
15 parties or I'll disagree with the parties. Do you understand  
16 that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand that these estimates  
19 are not binding on the government, Probation or the Court?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you also understand that if this  
22 estimate is wrong, that you will not be permitted to withdraw  
23 your plea of guilty?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And do you have any questions that you

1 would like to ask me about the charge or your rights or  
2 anything at all relating to this matter?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Mr. Oliva, do you know of any reason why  
5 your client should not plead guilty?

6 MR. OLIVA: No, Your Honor.

7 THE COURT: Are you aware of any viable legal  
8 defense to the charge?

9 MR. OLIVA: No, Your Honor.

10 THE COURT: Mr. Martinez, are you ready to plead at  
11 this time?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you wish to consult with your  
14 attorney before pleading?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: And what is your plea of guilty to Count  
17 Number 1 of the indictment that charges you with a continuing  
18 criminal enterprise, guilty or not guilty?

19 THE DEFENDANT: Guilty, Your Honor.

20 THE COURT: Are you pleading guilty voluntarily and  
21 of your own free will?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Has anyone threatened or forced you to  
24 plead guilty?

25 THE DEFENDANT: No, Your Honor.

1           THE COURT: Other than the promises that are  
2 contained in the written plea agreement, has anyone made any  
3 other promises to you to get you to plead guilty?

4           THE DEFENDANT: No, Your Honor.

5           THE COURT: Has anyone made any promise to you as  
6 the what your final sentence will be?

7           THE DEFENDANT: No, Your Honor.

8           THE COURT: Do you wish for me to review the charge  
9 with you again?

10          THE DEFENDANT: No, Your Honor.

11          THE COURT: At this time, I would like for you to  
12 describe for me in your own words what it is that you did in  
13 connection with the acts that are charged in Count Number 1.

14          Does he have a written statement, Mr. Oliva?

15          MR. OLIVA: He does, Your Honor.

16          THE COURT: Okay. Is he going to be able to read it  
17 himself?

18          MR. OLIVA: With some difficulty, but yes.

19          THE COURT: Okay. Did you assist in the preparation  
20 of this written plea agreement, Mr. Martinez?

21          THE DEFENDANT: Yes, Your Honor.

22          THE COURT: Okay. So, just take your time, and the  
23 Spanish interpreter may tap you on the arm or use whatever  
24 signal he has to let you know that you need to stop, so that  
25 he can translate what you are saying for us, for the record.

1 Okay? So just take your time. Whenever you are ready.

2 MR. OLIVA: (Consulting with the defendant.)

3 THE COURT: If he has too much difficulty, do you  
4 want to -- I'm just concerned about what he mentioned earlier  
5 about his ability to read and write.

6 MR. OLIVA: I mean, Your Honor, quite frankly, he  
7 has read it slowly. I have discussed it with him and, you  
8 know, everything in that document is something that he has --

9 THE COURT: Okay. He can just read it slowly.

10 MR. OLIVA: But it will be hard for him to read  
11 that. That's why he's smiling, by the way. It's not any  
12 disrespect to the Court.

13 THE COURT: I understand. I understand where he is  
14 coming from.

15 MR. OLIVA: He's embarrassed by his lack of  
16 literacy.

17 THE COURT: I understand where he is coming from.

18 MR. OLIVA: I appreciate that very much.

19 THE COURT: I understand. I know he does not mean  
20 any disrespect. He might be a little bit nervous, too, which  
21 is understandable.

22 MS. HENRY: Your Honor, may I confer with counsel to  
23 --

24 THE COURT: Absolutely. I just want to find a way  
25 to accommodate this, so that it will be easier on him.

1 MS. HENRY: (Confers with Mr. Oliva.)

2 So Judge, in order to accommodate this issue, would  
3 it be possible to -- given that Mr. Anaya Martinez does  
4 understand what is in the written allocution, if each sentence  
5 is read out loud and the Court asks him if he understands that  
6 and agrees to that, and he is essentially adopting that  
7 statement as his own. Would that facilitate things?

8 THE COURT: So we could -- let's see. It's written  
9 in Spanish, correct?

10 MR. OLIVA: Yes, Your Honor.

11 THE COURT: Okay. So Mr. Oliva, why don't you read  
12 --

13 MR. OLIVA: He read it yesterday. We went through  
14 it. He read it, you know, slowly. When he reads, he reads  
15 and he mouths, you know, and he read it again this morning.

16 THE COURT: So he can just read it slowly and then  
17 we'll just have the translation.

18 Just take your time. That's all.

19 THE DEFENDANT: This is the first time I have read  
20 anything in public, so I apologize.

21 THE COURT: You don't have to apologize. I  
22 understand. Just take your time.

23 THE DEFENDANT: Starting in or about 2007 and  
24 continuing and to 2014, I was a manager in a criminal  
25 enterprise that included more than five people.

1           During my participation with the organization, I was  
2 the leader of a group that collected proceeds of drug  
3 trafficking and provided security to Los Urabeños, who  
4 transported thousands of kilograms of cocaine from Colombia to  
5 Central America, knowing that those drugs would eventually be  
6 imported illegally to the United States.

7           Specifically, on or about 2007, I along with others,  
8 distributed approximately 2000 kilos of cocaine that were  
9 transported by boat from Colombia to Guatemala, with a final  
10 destination being the United States.

11           Around 2011, I was the manager of one of the zones  
12 in Colombia that were under the control of the drug  
13 trafficking organization. I was responsible for providing  
14 security for the transportation of the drugs through my zone  
15 and to collect taxes for the drug traffickers or on behalf of  
16 the drug traffickers regarding the drugs that were transported  
17 through my zone in Colombia to Central America and South  
18 America, with the final destination in the United States.

19           Around 2014, I along with others distributed at  
20 least one thousand kilograms of cocaine that were transported  
21 from Colombia to Central America, with a final destination in  
22 the United States.

23           During the time that I belong to the organization, I  
24 along with others used violence and threats of the use of  
25 violence, including the assassination of drug trafficking



1 rivals.

2 During the time that I belong to the organization, I  
3 obtained substantial income due to my participation in the  
4 organization.

5 THE COURT: Is the allocution satisfactory to the  
6 government?

7 MS. HENRY: Yes, Your Honor.

8 I would just offer one additional point regarding  
9 venue. The defendant referred to acts that occurred outside  
10 the United States.

11 Due to the nature of these charges, the government's  
12 basis for venue is the extraterritoriality statute of 21  
13 United States Code, Section 959, and the defendant first  
14 landed in the judicial district via John F. Kennedy  
15 International Airport.

16 THE COURT: I'm sorry. I couldn't hear you.

17 MS. HENRY: Excuse me. The defendant first landed  
18 in this district via John F. Kennedy International Airport.

19 MR. OLIVA: And I concur with that as well.

20 THE COURT: And this was during the time that he was  
21 participating in the criminal enterprise?

22 MS. HENRY: Meaning, Your Honor, that the acts  
23 occurred during the time period that the defendant stated;  
24 however, under that statute, venue attaches in the district  
25 where the defendant first lands in the United States.

1 THE COURT: Understood. Okay.

2 And the defendant understands that he waives any  
3 issue as to venue, correct?

4 MR. OLIVA: Yes, Your Honor.

5 THE COURT: And with that, is the allocution  
6 satisfactory to the government?

7 MS. HENRY: Yes, Your Honor.

8 THE COURT: Based on the information given to me, I  
9 find that Mr. Martinez is acting voluntarily, that he  
10 understands his rights and the consequences of his plea, and  
11 that there is a factual basis for the plea, and I therefore  
12 accept his plea of guilty to Count 1 of the superseding  
13 indictment.

14 I've gone through some length already explaining the  
15 sentencing procedures. There will be a separate scheduling  
16 order that will issue in connection with objections to the  
17 Pre-sentence Report.

18 I do direct everybody's attention to my standard  
19 requirements in criminal cases, but just to clarify, it is a  
20 simultaneous schedule. That means that both the government  
21 and defense counsel's objections -- or if there are no  
22 objections, that has to be in writing. Everything has to be  
23 in writing -- 14 days after disclosure. Please make sure I  
24 get a hard courtesy copy.

25 So just to be clear, if there are objections or

1 there are no objections, there should be a letter directed to  
2 Probation indicating that.

3 If there are objections, the adversary must respond  
4 in 14 days, again, in writing. Please make sure I get a hard  
5 courtesy copy. I only need one copy. That's fine.

6 If a reply is wished by the desired, by the  
7 proponent of the objection, then again, that's 14 days after  
8 the response.

9 In connection with sentencing memoranda, that has  
10 changed from what I have in my standard requirements. So just  
11 to be clear the change is as follows: I now require the  
12 government to file first, and that would be 14 days prior to  
13 sentencing. You count backwards from the date of sentence.  
14 Do not include the date of sentence. That way, you land on  
15 the date it's due. And defense counsel's sentencing  
16 memorandum is due seven days prior to sentence. Again,  
17 counting backwards the same way.

18 MS. HENRY: Calendar days, Your Honor?

19 THE COURT: Calendar days, yes. So that's another  
20 change. I went federal rules on it, basically. Okay? So 14  
21 days, and do away with counting up holidays and weekends and  
22 all of that sort of thing. So 14 days should take care of any  
23 of that, by and large.

24 Trials happen. Life happens. If you can't comply  
25 with that schedule, just let me know. This is bound to be a

1 fairly complicated Pre-sentence Report. There could be  
2 complicated objections.

3 So I read absolutely everything that is submitted.  
4 So just let us know if we have to adjust the schedule. The  
5 sooner we know, the better. Okay?

6 If you have any questions about any of this, just  
7 contact my deputy. Okay?

8 MR. OLIVA: Thank you, Your Honor.

9 THE COURT: Anything else the parties would like to  
10 address with the Court?

11 MS. HENRY: No, Your Honor.

12 MR. OLIVA: No, Your Honor.

13 THE COURT: Okay. Thank you, marshals. Thank you  
14 for your patience. Please take charge.

15 Thank you, Mr. Michelena.

16 THE INTERPRETER: You're welcome, Your Honor.

17 THE COURT: Thank you, Mr. Martinez.

18 THE DEFENDANT: Thank you, Your Honor.

19 (Sentencing concluded.)  
20  
21  
22  
23  
24  
25